

Contract between the Division of Mental Retardation and Developmental Disabilities and a Personal Assistant to be Employed by a Client of the Division

The purpose of this contract is to allow clients of the Division of Mental Retardation and Developmental Disabilities (the Division), and their families, to, employ their own personal assistant worker(s). This contract between the Division's Regional Center and the personal assistant (employee) employed by the client or the client's family (employer) defines the terms and conditions under which the Division will make payments on behalf of the employer to the employee.

1. Parties to the contract

a. The _____ Regional Center, established by the Division of Mental Retardation and Developmental Disabilities by authority of 633.100 RSMo (1994) and hereinafter referred to as the **Regional Center**.

b. _____, a Personal Assistant, hereinafter referred to as the **employee**.

2. Other involved entities, not party to the contract

- a. The client of the Division, or his or her family, hereinafter referred to as the **employer**.
- b. Payroll Service Provider, a payroll office under contract with the Division, hereinafter referred to as the **fiscal intermediary**. The Payroll Service Provider will be an agent for, and provide payroll services for, the employer.

3. Explanation

A personal assistant employed in the home of, and working at the direction of, the person he or she supports, will ordinarily not qualify under the federal Fair Labor Standards Act (FLSA) as a self-employed independent contractor. The personal assistant must, nearly always, be considered an employee. He or she will therefore need to have payroll taxes withheld and paid on his or her behalf, including Social Security (FICA), and Federal and State Unemployment Insurance. This contract is only for personal assistants that will be employees of the family or consumer.

The fiscal intermediary will write payroll checks to personal assistants who are employed by the Division's clients, withholding the necessary tax amounts, including employer's share, and paying these amounts to the proper authorities on a quarterly basis. In addition to withholding FICA and Unemployment, the fiscal intermediary will withhold income taxes. With each payroll check or direct deposit notice, the personal assistant will also receive an explanation of withholdings.

4. Basis of Payment

- a. The Regional Center will deposit funds with the fiscal intermediary to pay an agreed hourly rate for service provided to the employer by the employee.
- b. The fiscal intermediary will issue payroll checks and/or make deposits to the employee on behalf of the employer.
- c. Payment will be made only for services described and authorized in a plan of care agreed to by the employer and the Regional Center. A copy of pertinent parts of this plan will be made available to the employee.
- d. Units of service are in quarter hours and may not be rounded up.
- e. Any service hours provided within a month beyond the number of hours authorized for that month will not be payable under this contract. Hours worked should not exceed 40 hours in a work week.
- f. Payment to the employee will be made only for services actually delivered by the employee.
- g. The employee shall have undergone a criminal background check with the Missouri Highway Patrol and an inquiry to the Missouri Division of Aging's and the Missouri Department of Mental Health's employee disqualification lists. The check and inquiry shall be initiated, at the

latest, within two days of being employed, in accordance with the Code of State Regulations, 9 CSR 10-5.190.

- h. If the employee is determined by the background check and/or the inquiry to the disqualification lists to not be employable in accordance with 9 CSR 10-5.190, employment shall not be offered, or if already started, shall be terminated. The employee may request an exception under certain conditions specified in 9 CSR 10-5.190.
- i. The employee shall have qualifications and training as defined in the Division's catalog of services (copies of pertinent pages are attached).
- j. Any service hours provided before all requirements of this contract are completed will not be payable.

5. Method of Payment

- k. The Regional Center will furnish the employer with documents authorizing payment of the services included in the plan of care. These documents will specify maximum hours and rates for payment and the time frames to which these maximums apply. The Regional Center will also furnish the employer with forms with which to document services performed and time worked.
- l. The employee and employer shall be responsible for accurately recording the hours worked and services performed by the employee. This record, or timesheet, once approved by the employer, becomes the basis for payment to the employee. Any falsification or other misrepresentation of the information on this record will constitute fraud. All payments made as a result of inaccurate timesheet information will be recouped from the employee and/or employer. Any apparent fraud will, in addition, be referred to law enforcement agencies.
- m. There will be two payroll periods per month. The first will begin on the first day and run through midnight on the 15th day of the month. The second payroll period will begin on the 16th day and run through midnight of the last day of the month.
- n. At the end of each payroll period, the employer will approve the time sheet completed by the employee, then forward it to the Regional Center. It must reach the Regional Center within five days after the end of the payroll period to be included in the payment process for that period.
- o. The fiscal intermediary will issue a paycheck to the employee or make a direct deposit in the employee's account on the last day of the payroll period following the period for which payment is being made. For example: payment for the first payroll period in a month will be issued on the last day of that month; the payment for the second payroll period in a month will be issued on the 15th day of the following month.
- p. If the Regional Center does not receive an employee's approved timesheet within five calendar days after the end of a payroll period, those hours worked will not be paid at the end of the next payroll period. Those hours shall be paid on the earliest possible subsequent payday. For example: the payment for the first payroll in January should be issued on January 31st. If the timesheet is submitted after the deadline (January 20th) but before the end of January, the amount of payment due will be processed together with the payroll for the second payroll period in January, and payment for wages earned will be issued on February 15th. If this occurs, the amounts of taxes withheld will vary slightly.
- q. The fiscal intermediary will withhold all taxes, including the employee's share of Social Security (FICA) and the employee's income tax. The fiscal intermediary will also withhold all of the employer's taxes, including the employer's share of FICA and both federal and state unemployment taxes. The fiscal intermediary pays these tax amounts to the appropriate authorities, maintains records of all withholdings, and furnishes the employee and employer with end of year statements for filing with income tax returns, etc.
- r. The employer must not supplement (make extra) payments to the employee outside of this contract. The records maintained by the fiscal intermediary will be the official records of the employer/employee relationship that will be reported to state and federal tax authorities. Both the employee and employer could be subjected to prosecution for tax evasion if all earnings and taxes are not accurately reported to these taxing authorities.

6. Conditions

- a. The quality, appropriateness and timeliness of services reimbursed through this contract shall be subject to evaluation, through inspection or other means, by the Regional Center and the Division. Furthermore, if Medicaid payments are involved, the Missouri Department of Social Services and the Federal Department of Health and Human Services (the State and Federal Medicaid Agencies) shall also have the right to make such evaluation.
- b. The employee understands and agrees that he or she is the employee of the client or client's family (the employer), and shall not represent him/herself as an employee of the State of Missouri. The employee also understands and agrees that this contract does not limit the employer from employing other personal assistants within the terms of the employer's agreement with the Regional Center. Finally, the employee understands and agrees this contract does not guarantee any number of hours of work.
- c. Information shared with the employee by the employer or the regional center regarding the client shall be confidential.
- d. Payment does not include fringe benefits such as health insurance, sick leave, vacation or paid holidays.
- e. Any liability related to accidents or injuries incurred by employees while providing services is the responsibility of the employer.
- f. The employee and employer shall set the conditions of employment, and termination of employment shall be the prerogative of the employer. Termination by the employer shall not, however, automatically cancel this contract.
- g. This contract shall serve to allow the employee to be employed by more than one client or family (employer) within the region administered by the Regional Center that is a party hereto.
- h. Either the employee or the Regional Center may terminate this contract for any reason with 30 days advance notice in writing.
- i. The Regional Center shall immediately cancel this contract if: the employee fails to obtain a successful criminal background screen; is placed or found to have been placed on an employee disqualification list maintained by either the Missouri Division of Aging or the Missouri Department of Mental Health; is found to have committed abuse, neglect, or exploitation of the client; or is found to have committed any fraudulent act or otherwise to have violated the terms and conditions of this contract.

7. Period of the Contract

- a. The period of this contract is for one State fiscal year (July 1st of one calendar year through June 30th of the following calendar year). All contracts with personal assistants shall be reviewed by the Regional Center at the end of each fiscal year. If the personal assistant is employed by a client or family at the time of the review, the contract shall automatically be renewed by the Regional Center.
- b. If, at the time of the review, the employee is not employed, the Regional Center shall terminate the contract, unless it is determined that future employment with a client or client's family is likely. This decision is solely at the discretion of the Regional Center.
- c. **This contract covers the following period:**

_____ to _____.

8. Signatures

(Personal Assistant)

Date: _____

(Regional Center Director or Designee)

Date: _____